

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.M.P. No. 8 of 2016

Vijay Kumar Agrawal, S/o. Late Shri Pushpanand Agrawal, Aged about 51 Years, R/o. Near Akash Godown, Srinagar, Gudhiyari, Police Station- Gudhiyari, Raipur, Civil and Revenue District Raipur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh Through: Police Station Gudhiyari, Raipur District Raipur (C.G.).
2. Nivesh Sharma, S/o. Late Shri Yogendra Sharma, R/o. Near Macchi Talab, Gudhiyari, Police Station- Gudhiyari, Raipur, Civil and Revenue District Raipur (C.G.)

---- Respondents

For Petitioner	:	Mr. Kashif Shakeel, Advocate
For Respondent No.1/State	:	Mr. Neeraj Jain, Govt. Advocate
For Respondent No.2	:	Mr. Rishi Sahu, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

21/01/2016

1. This petition is to quash the FIR made by respondent No. 2 Nivesh Sharma wherein a Criminal Case registered in Crime No. 280/2015 under section 420,467 and 468 of IPC before Police Station – Gudhiyari, Raipur, District – Raipur (C.G.)
2. As per the petition, an agreement was executed by Vijay Kumar Agrawal in favour of the respondent No. 2 Nivesh Sharma for sale of land bearing Khasra No. 172/1, 172/2, admeasuring 0.084 hectare, P.H. No. 107/37, situated at Village Gogaon, Tahsil and District Raipur.

The agreement was executed between the petitioner and the respondent No. 2 on 20.12.2013. The sale consideration was agreed for Rs. 360 per Sq. feet out of which the earnest money as an advance of Rs. 5,00,000/- was paid. In such agreement of sale, the petitioner contented that he was the owner of the said land. Subsequently, the respondent No.2 came to know the fact that the petitioner was not the owner of the said land and the said land was owned by Smt. Shobha Devi Agrawal W/o. of Mahesh Agrawal, Samta Colony, Raipur. Later on various reasons the contract agreement could not be performed and ultimately, the respondent No. 2 lodged an FIR in Crime No. 280/2015 under section 420,467 and 468 of IPC against the petitioner before Police Station – Gudhiyari, Raipur, District – Raipur (C.G.).

3. Counsel for the petitioner would submit that the petitioner and the respondent No. 2 entered into an agreement and in lieu the agreement was executed and the ownership was not passed. Thereafter, the parties have entered into an agreement and the amount of Rs. 5,00,000/- has been returned to the respondent No.2 on 20.11.2015. He further submits that earlier an agreement dated 20.11.2015 was also annulled by cancellation of agreement deed dated 20.11.2015. He further contented that in support of the same an affidavit was also executed wherein the respondent No. 2 stated that the advance amount against the sale consideration given to the petitioner has been received back by him. He further submits that the respondent No. 2 do not want to prosecute further with the FIR therefore, the same may be quashed.

4. Both the parties are present before this Court. On being interrogated by the State Counsel, the respondent No. 2 Nivesh Sharma, who was the complainant has stated that he has received the earnest money of Rs. 5,00,000/-. He further stated that he do not want to continue with criminal case and he has amicably settled the dispute and therefore, he want to withdraw the complaint against the Petitioner without fear and pressure.
5. The Supreme Court in case of ***Gian Singh Vs. State of Punjab and (2012)10 SCC 303 : 2012 Cri.L.J4934*** laid down guidelines for quashing of the non-compoundable offences in the event of compromise being entered into between the parties. Para 49, 50 53, 54 are relevant here and quoted below:

“49. Section 482 of the Code, as its very language suggests, saves the inherent power of the High Court which it has by virtue of it being a superior court to prevent abuse of the process of any court or otherwise to secure the ends of justice. It begins with the words, ‘nothing in this Code’ which means that the provision is an overriding provision. These words leave no manner of doubt that none of the provisions of the Code limits or restricts the inherent power. The guideline for exercise of such power is provided in Section 482 itself i.e., to prevent abuse of the process of any court or otherwise to secure the ends of justice. As has been repeatedly stated that Section 482 confers no new powers on High Court; it merely safeguards existing inherent powers possessed by High Court necessary to prevent abuse of the process of any Court or to secure the ends of justice. It is equally well settled that the power is not to be resorted to if there is specific provision in the Code for the redress of the grievance

of an aggrieved party. It should be exercised very sparingly and it should not be exercised as against the express bar of law engrafted in any other provision of the Code.

50. In different situations, the inherent power may be exercised in different ways to achieve its ultimate objective. Formation of opinion by the High Court before it exercises inherent power under Section 482 on either of the twin objectives, (i) to prevent abuse of the process of any court or (ii) to secure the ends of justice, is a sine qua non.

53. Quashing of offence or criminal proceedings on the ground of settlement between an offender and victim is not the same thing as compounding of offence. They are different and not interchangeable. Strictly speaking, the power of compounding of offences given to a court under Section 320 is materially different from the quashing of criminal proceedings by the High Court in exercise of its inherent jurisdiction. In compounding of offences, power of a criminal court is circumscribed by the provisions contained in Section 320 and the court is guided solely and squarely thereby while, on the other hand, the formation of opinion by the High Court for quashing a criminal offence or criminal proceeding or criminal complaint is guided by the material on record as to whether the ends of justice would justify such exercise of power although the ultimate consequence may be acquittal or dismissal of indictment.

54. Where High Court quashes a criminal proceeding having regard to the fact that dispute between the offender and victim has been settled although offences are not compoundable, it does so as in 280/2015 under section 420, 467 and 468 of IPC before Police Station

– Gudhiyari, Raipur, District – Raipur (C.G.) its opinion, continuation of criminal proceedings will be an exercise in futility and justice in the case demands that the dispute between the parties is put to an end and peace is restored; securing the ends of justice being the ultimate guiding factor. No doubt, crimes are acts which have harmful effect on the public and consist in wrong doing that seriously endangers and threatens well-being of society and it is not safe to leave the crime- doer only because he and the victim have settled the dispute amicably or that the victim has been paid compensation, yet certain crimes have been made compoundable in law, with or without permission of the Court. In respect of serious offences like murder, rape, dacoity, etc; or other offences of mental depravity under IPC or offences of moral turpitude under special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity, the settlement between offender and victim can have no legal sanction at all. However, certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions or the offences arising out of matrimony, particularly relating to dowry, etc. or the family dispute, where the wrong is basically to victim and the offender and victim have settled all disputes between them amicably, irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent power, quash the criminal proceeding or criminal complaint or F.I.R if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated. The above list is

illustrative and not exhaustive. Each case will depend on its own facts and no hard and fast category can be prescribed.”

6. On being Reading of the above quoted paragraphs would show that Hon'ble Supreme Court has held that where certain offences which overwhelmingly and predominantly bear civil flavour having arisen out of civil, mercantile, commercial, financial, partnership or such like transactions where the wrong is basically to the victim and the offender and the victim have settled all the disputes *inter-se* amicably, then irrespective of the fact that such offences have not been made compoundable, the High Court may within the framework of its inherent powers, quash the criminal proceeding or criminal complaint or F.I.R., if it is satisfied that on the face of such settlement, there is hardly any likelihood of offender being convicted and by not quashing the criminal proceedings, justice shall be casualty and ends of justice shall be defeated.
7. By application of the aforesaid principles to the instant case, since the complainant/respondent No.2 has stated on oath by filing affidavit as also in person before this Court that she entered into compromise and the complainant and petitioner have amicably settled the dispute and considering the averments made in application for compromise which is supported by the affidavit this Court is satisfied that there is hardly any likelihood of the offenders being convicted in the teeth of submission made by the complainant.

8. Therefore, considering the nature of the dispute and since the parties have entered into compromise and the complainant/respondent No.2 does not want to continue the criminal proceedings against the petitioner any longer, I deem it expedient to exercise the inherent power conferred under section 482 Cr.P.C., in the instant case. Accordingly, the FIR registered under crime No. 280/2015 at Police Station – Gudhiyari, Raipur District Raipur registered against the petitioner for the offences punishable under Sections 420,467 and 468 of IPC before the Police Station Gudhiyari, Raipur District Raipur (C.G.) is quashed.
9. Consequently, this petition is allowed. The petitioner is acquitted of the charges.

Sd/-

(Goutam Bhaduri)
Judge